



December 3, 2003

**VIA ELECTRONIC SUBMISSION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

Re: **Notice of Ex-Parte Communication**  
**WC Docket No. 02-361**

On December 2, 2003, Jim C. Smith, Dorothy Attwood, Gary Phillips, Diana Young and David Hostetter of SBC Communications met with Tamara Preiss and Jennifer McKee of the Pricing Policy Division and Russ Hanser of the Competition Policy Division. The purpose of the meeting was to discuss AT&T's petition for declaratory ruling in which it seeks to avoid the application of access charges to its "so called" IP telephony traffic. The attached presentation served as the basis of our discussion.

In accordance with section 1.1206(b) and 1.49(f) of the Commission's rules, this letter and its attachment are being electronically filed via the Commission's ECFS system for inclusion in the public record for the above-referenced docket. Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

/s/David Hostetter

Attachment

CC: Tamara Preiss (via electronic mail)  
Jennifer McKee (via electronic mail)  
Russ Hanser (via electronic mail)



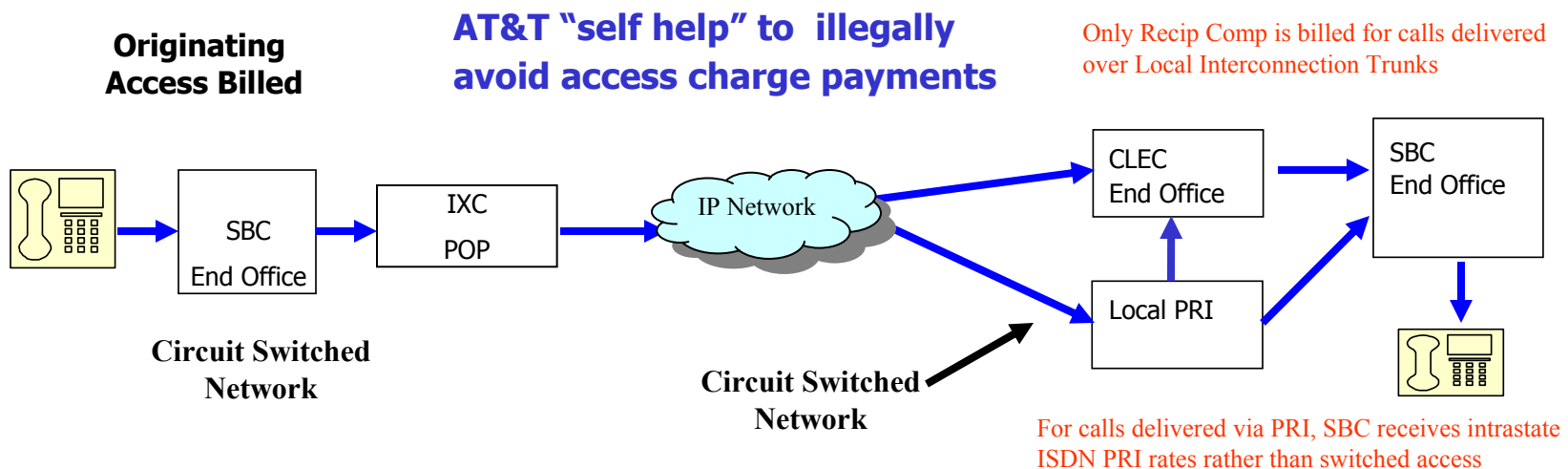
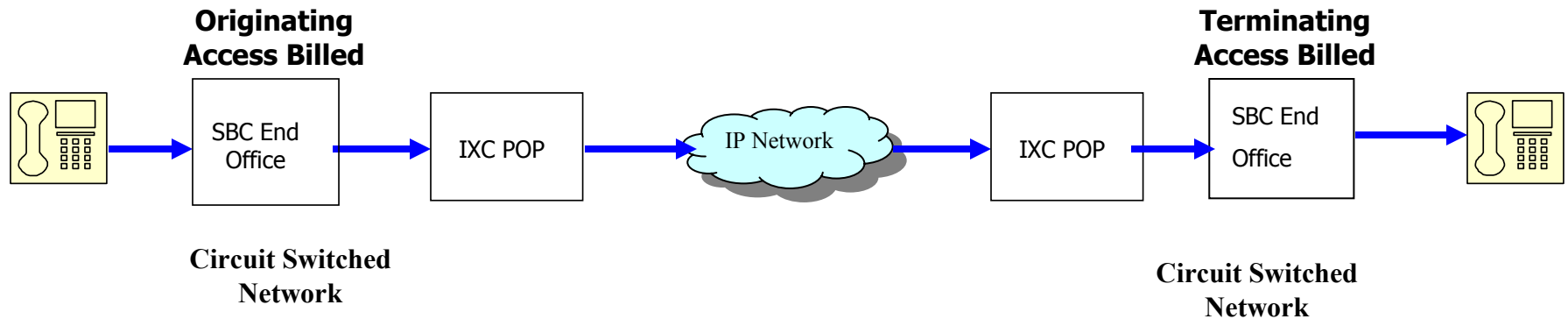
**AT&T's**  
**“Access Avoidance”**  
**Petition**

WC Docket No. 02-361

December 2, 2003

# Application of Access Charges

## Lawful access arrangement



# AT&T Is Wrong as a Matter of Law



- AT&T is obligated to pay switched access charges on all of its interstate telecommunications service traffic
  - 47 C.F.R. 69.5(b) says access charges “shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”
- Traffic that originates on the circuit switched PSTN and terminates on the circuit switched PSTN, with IP transport only for interexchange transmission (regardless of whether it’s six feet or 1000 miles), doesn’t change the application of the law
- AT&T cannot demonstrate that it qualifies for the ESP exemption
  - AT&T does not provide its subscribers with enhanced features, functionalities or net protocol conversion
  - Even if the traffic were enhanced, the ESP exemption would not apply because it was established to provide ISPs with access to *their* own customers – in contrast, AT&T is illegally using the ESP exemption to terminate traffic to non-subscribers
- The *Universal Service Report to Congress* did not create an additional exemption, nor did it relieve AT&T of the obligation to pay switched access charges for the 3 traffic described in its petition

# AT&T Is Wrong as a Matter of Policy



- Switched access charges, particularly intrastate switched access, continue to support affordable universal service rates throughout the country
- AT&T is not entitled to unilaterally decide when the existing universal service framework will end
- Without comprehensive universal service reform, including rate restructuring, AT&T's position would result in dramatically increased rates for rural customers
- Before its "about face," even AT&T recognized the prevailing jurisprudence requires they pay switched access charges

*"Moreover, any failure to enforce USF and access charge payment obligations flies in the face of the Commission's commitment to technology-neutral policies, and triggers more artificially-stimulated migration from traditional circuit switched telephony to packet switched IP services that are able to take advantage of this 'loophole.' Ultimately, the failure to do so could undermine universal service, as Internet providers combine their offerings to avoid their support obligations."*

AT&T 1/26/1998 Comments – Docket 96-45 – Universal Service Report to Congress, pages 12 – 13

- Ignoring Commission orders and rules sets a dangerous precedent

# Effect of AT&T's Position



- Potential for significant access avoidance by migrating long distance traffic to IP transport
  - AT&T is poised to put most, if not all of its traffic, on IP transport and has notified SBC that it is routing IP transport traffic to SBC either through CLECs over local interconnection trunks or through SBC's intrastate retail business services, e.g., ISDN PRI
  - MCI has announced that 100% of its traffic will utilize IP transport by 2005
  - Sprint announced its plans to convert its entire circuit switched network to next generation packet and launched its initial application this year
- AT&T's position impacts CLECs when CLECs are unaware that AT&T is delivering access traffic to them
- Annual terminating revenue at risk
  - Current estimated annual interstate and intrastate lost revenue due to illegal access avoidance is between \$200M and \$450M
  - Additional estimated annual interstate and intrastate access revenue at risk is \$800M

# Recommended FCC Actions



- Reject the relief requested by AT&T in its 10/18/02 *access avoidance* petition
- Confirm that the ESP exemption is limited to the access between an ISP and its subscribers
- Require carriers to deliver complete and accurate signaling information for all circuit-switched voice calls that terminate on the PSTN
  - This information includes calling party number, automatic number identification, charge number and jurisdictional indicator parameter information